

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DEANA COLEMAN, Mother of Kayla Peck,

Plaintiff,

v.

AMERICAN COMMERCE INSURANCE, a  
foreign corporation doing business in  
Washington,

Defendant.

Case No. 09-5721RJB

ORDER DENYING AMERICAN  
COMMERCE INSURANCE'S  
MOTION FOR  
RECONSIDERATION OF  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

This matter comes before the court on the above-referenced motion (Dkt. 97). The court is familiar with the records and files herein and all documents filed in support of and in opposition to the motion. For the reasons stated in the court's Order Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment (Dkt. 88) and herein, the Motion for Reconsideration should be denied. The court does, however, wish to make the following additional comments.

1. In the court's order (Dkt. 88, p. 8, lines 14-17), the court did not strike Mr. Hight's testimony, but did not consider it. The court did not strike the testimony because it was not "redundant, immaterial, impertinent or scandalous." Fed. R. Civ. P. 12(f). Not striking the testimony does not mean that it was "accepted." The court did not consider it because of its earlier ruling granting plaintiff's motion to exclude (Dkt. 76), and because Mr. Hight's testimony was little more than legal conclusions, arguments and opinions that did not change the fact that material facts were not in issue.

1           2. The plaintiff's lay understanding of her claim does not bind her to legal conclusions  
2 that flow from the facts of the case.

3           3. Whether plaintiff suffered actual damage covered by the subject policy remains to be  
4 determined.

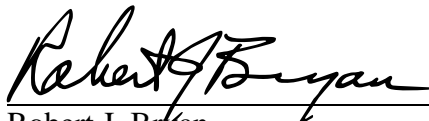
5           4. There is a very substantial difference between the information given to plaintiff by  
6 defendant and the "Hegel test." For example, in its letter of January 9, 2009, to Mr. Meyers,  
7 plaintiff's lawyer (Dkt. 98, Exh. 2), the defendant made this statement: "It is our understanding  
8 from information you provided to us that Ms. Coleman did not seek any type of medical  
9 treatment. Therefore, under the terms and conditions of Ms. Coleman's insurance policy, she did  
10 not sustain any 'bodily injury' from this accident." That statement is erroneous and is  
11 tantamount to a rejection of Ms. Coleman's claim. The company's statement is far different than  
12 the law the company was apparently trying to paraphrase which, in pertinent part, reads as  
13 follows: "We hold that to satisfy the objective symptomatology requirement established in  
14 Hensley, a plaintiff's emotional distress must be susceptible to medical diagnosis and proved  
15 through medical evidence." Hegel v. McMahon, 136 Wn.2d 122 (1998). One can only  
16 speculate about what would have occurred had the defendant correctly referred to the law, but it  
17 appears likely that Coleman would have sought a medical diagnosis. It is clear that defendant  
18 did not provide any necessary forms, instructions or reasonable assistance, nor did it make a  
19 reasonable investigation in accord with the requirements of Washington insurance law.

20           The Motion for Reconsideration should be DENIED.

21           IT IS SO ORDERED.

22           The Clerk is directed to send copies of this Order all counsel of record and any party  
23 appearing *pro se* at said party's last known address.

24           DATED this 26<sup>th</sup> day of August, 2010.

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26             
27           Robert J. Bryan  
28           United States District Judge